

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0571
STATE GROSS RETAIL / USE TAX
For Years 1993, 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

- I. Gross Retail Tax – Temporary Storage Exemption:** Items purchased for use outside Indiana.

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2; IC 6-2.5-3-4; Miles v. Indiana Dept. of State Revenue, 659 N.E.2d 1158 (Ind. Tax Ct. 1995).

Taxpayer protests the assessment of gross retail (sales) tax on items purchased for eventual use outside the state of Indiana.

- II. Sales / Use Tax – Sales for Resale:** Items attached to product for sale.

Authority: IC 6-2.5-5-8; Miles v. Indiana Dept. of State Revenue, 659 N.E.2d 1158 (Ind. Tax Ct. 1995).

Taxpayer protests the assessment of tax on items attached to products for sale.

- III. Sales / Use Tax – Property to Be Incorporated:** Items incorporated into personal property for sale in taxpayer's business.

Authority: IC 6-2.5-5-6; 45 IAC 2.2-5-14.

Taxpayer protests the assessment of tax on items incorporated into other tangible personal property produced for sale.

STATEMENT OF FACTS

Taxpayer operates retail stores specializing in a wide variety of sporting goods. Taxpayer's corporate headquarters is located in Indiana. Taxpayer operates a distribution center located in Indiana and operates retail outlets both in and outside of Indiana.

I. Use Tax – Temporary Storage Exemption: Items purchased outside Indiana.

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC 6-2.5-5-1.

A complimentary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC 6-2.5-3-2.

The complimentary use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if: (1) the property is delivered into Indiana by or for the purchaser of the property; (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and (3) the property is subsequently transported out of state for use solely outside Indiana. IC 6-2.5-3-2(d).

According to IC 6-2.5-3-4, the storage, use, and consumption of tangible personal property is exempt from use tax if: 1) the property was acquired in a retail transaction in Indiana and the sales tax had been paid; or 2) the property was acquired in a transaction that is exempt from sales tax under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

Taxpayer was assessed tax on purchases from Indiana registered vendors which were shipped to the Indiana distribution center (or picked up by the taxpayer and taken to the distribution center) and then later sent to out-of-state locations as store fixtures and supplies. Taxpayer predicates its protest on IC 6-2.5-3-2(a), (d) arguing that its temporary storage of personal property in Indiana did not give rise to a taxable exercise of ownership because taxpayer's personal property was temporarily retained in Indiana for subsequent use outside of Indiana. As a result, taxpayer argues, the items did not meet the definition of taxable storage under IC 6-2.5-3-1 or IC 6-2.5-3-2 but were exempt under the definition of storage as discussed by the Indiana Tax Court in Miles v. Indiana Dept. of State Rev., 659 N.E.2d 1158 (Ind. Tax Ct. 1995).

Taxpayer makes a number of arguments for finding that the temporary storage exception, provided in IC 6-2.5-3-2(d), is applicable to gross retail (sales) tax. Taxpayer argues that sales and use taxes are complimentary taxes and that the creation of an exception that treats one tax differently from the other brands the complimentary notion a nullity. Providing the exemption to use tax and not sales tax favors out-of-state merchants over in-state merchants. Further, the legislature could not have intended an absurd, illogical, and inconsistent application of the exception.

Taxpayer fails to meet its “burden [of] demonstrating entitlement to the exemption.” Indianapolis Fruit Co. v. Dept. of State Rev., 691 N.E.2d 1379, 1383 (1998). Sales tax paid to an Indiana registered vendor may only be refunded if the transaction is exempt under any one of the sections of IC 6-2.5. The temporary storage exception found within IC 6-2.5-3-2(d) is specifically and exclusively applicable to “[a]n excise tax, known as the use tax.” IC 6-2.5-3-2.

FINDING

Taxpayer’s protest is respectfully denied.

II. Sales / Use Tax – Sales for Resale: Items attached to product for sale

DISCUSSION

Taxpayer protests the assessment of tax on items attached to its products for sale. Taxpayer argues that pocket flashers and price tags, affixed to its merchandise, are purchased for resale in the ordinary course of business and, therefore, are exempt from Indiana gross retail tax under IC 6-2.5-5-8.

Under IC 6-2.5-5-8, transactions involving personal property are exempt from the state gross retail tax of the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

In order for an item to be “resold,” the customer must pay an itemized amount for that item. Miles, Inc. v. Indiana Dept. of State Rev., 659 N.E.2d 1158, 1165. Further, separate bargaining must occur between the customer and taxpayer for the exchange of the particular item. Id. Taxpayer’s pocket flashers and price tags do not fall within the meaning of the exemption found under IC 6-2.5-5-8. Taxpayer’s customers do not pay an itemized amount for the pocket flashers or tags neither do its customers bargain as to the face value of those items.

FINDING

Taxpayer’s protest is respectfully denied.

III. Sales / Use Tax – Property to Be Incorporated:

DISCUSSION

Alternatively, taxpayer protests the assessment of for tax on pocket flashers and price tags incorporated into other tangible property produced. IC 6-2.5-5-6 provides that

transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, refines, or processes for sale in his business. 45 IAC 2.2-5-14 requires that, in order for an item to be so incorporated, the item “must become a material or integral part of the finished product.”

Taxpayer’s pocket flashers and price tags do not come within the exemption provided under IC 6-2.5-5-6 because the items do not become a material or integral part of taxpayer’s merchandise. Taxpayer’s items are not essential to the product to which they are attached neither do they affect performance of that product. Instead the pocket flashers and price tags are intended to provide information concerning taxpayer’s merchandise, and, after having performed that function, are routinely discarded as unessential to the function of that merchandise.

FINDING

Taxpayer’s protest is respectfully denied.